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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
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In the Matter of MAY 24 1999
FEDERAL COMMUNICATIONS COMMISSION)
Amendment of Section 73.3598)
of the Commission's Rules)
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RM-9567

To: The Commission

COMMENTS OF KM COMMUNICATIONS, INC.

KM Communications, Inc. ("KM"), by its counsel, and pursuant to Section 1.405(a) of the Commission's Rules, 47 C.F.R. § 1.405(a), respectfully submits these Comments in support of certain proposals made in the petition for rulemaking filed by Entravision Holdings, LLC and Paul A. Zevnik ("Petitioners") in the above-captioned proceeding.¹

1. KM is a 100% minority-owned and female-owned corporation which first became involved in the ownership and operation of commercial broadcast stations approximately five years ago. KM is the licensee of four low power television ("LPTV") stations, is the permittee or its principal has interests in the permittee for several new full power commercial television and FM radio stations, and has several more applications pending for additional new full power commercial television and FM radio stations. KM, as a small, female- and minority-owned corporation, has encountered -- and has had some success overcoming -- many of the obstacles minorities face when first entering the broadcasting industry. KM currently provides

¹ See Amendment of Section 73.3598 of the Commission's Rules, RM-9208, Petition for Rulemaking, filed March 10, 1999 by Entravision (the "Petition"). Statements in support or opposition to the petition may be filed on or before May 24, 1999. See Public Notice, DA 99-648 (released April 8, 1999). Therefore, these comments are timely filed.

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programming on its LPTV stations targeted toward ethnic and minority populations, including foreign language programming, as well as other alternative programming. Accordingly, as the type of minority-owned broadcaster that the Commission has suggested it seeks to encourage, KM brings a needed perspective to the issues raised in the Petition.

2. While KM supports some aspects of Entravision's proposal, KM believes that the proposal needs to be more carefully tailored in several respects if it is to have the desired effect of promoting minority participation in broadcasting. Entravision proposes a new rule that would permit "qualified broadcasters" to acquire expiring or recently-expired construction permits and receive an additional two years to construct, where "qualified broadcasters" is defined as entities either: (i) having at least 20% minority "membership" or (ii) making "a firm commitment to provide specialized programming, aimed at minority-group members or in foreign languages, for at least 80% of the applicable station's weekly operating hours." See Petition at 5.

3. KM has concerns with both prongs of Entravision's proposed definition of qualified broadcasters. On the first prong, KM is concerned that the 20% threshold is too low, and that the vague term "membership" requires more definition in light of the wide variety of possible ownership structures. The language of Entravision's proposed rule elaborates a bit, providing that the minority-group members would be required to own 20% of the equity and "participate in the management and control" of the qualified buyer, id. at 8, but these clarifications do not fully alleviate KM's concerns. For example, a 20% equity interest should entitle the holder to 20% of the profits of and voting rights in the entity, and 20% of the proceeds upon a sale of the entity. In addition, "participate in management and control" is a fairly vague concept. KM urges the Commission to use terms that are better defined, and

consistent with other ownership rule definitions and concepts -- such as the Commission's attribution rules and policies -- when defining the level of minority participation in ownership and management in an entity that qualifies an entity as a qualified broadcaster. KM also urges the Commission to consider requiring control by the minority-group members, or at least a higher level of ownership and control by the minority-group members, in qualified broadcasters.

4. For the second prong, KM is concerned that most of the programming commitment aspects of the definition would be difficult (if not impossible) to define and enforce. Other than foreign language programming, how would the Commission determine, or adopt rules which define, programming that is "aimed at minority-group members" or that "serve the programming needs of minority-group members"? Id. at 5 and 8. While KM is in favor of programming that truly serves such purposes, the inherent subjectivity of any such definition would make distinguishing that type of programming, and therefore enforcement, very difficult. KM would favor any more objective tests that may be devised for any definition based on programming content; otherwise, any new rule adopted very well could result in abuse of the process. As a result, KM asserts that the definition of qualified broadcaster should be limited to entities that are owned and controlled by minority-group members, with any programming commitment requirements only in addition to that threshold requirement.

5. In addition to Entravision's proposed definition of qualified broadcaster, KM would also add a requirement that the qualified broadcaster not be affiliated with the permittee that would be assigning or transferring control of the construction permit in question. Otherwise, an entity holding an expired or expiring permit may seek to assign or transfer its permit to a qualified broadcaster entity that it still owns or controls, in order to benefit from an

additional two years to construct, when such permittee failed to construct the station and initiate service within the required time in the first instance. The definition of "affiliate" in the Commission's general auction rules² may be appropriate for this purpose.

6. KM agrees with Entravision that economic circumstances are resulting in fewer opportunities for minorities -- indeed, any new entrant -- to become involved in broadcast ownership and management. KM has been fortunate that, faced with the high costs of acquiring existing stations in the mid-1990's, its approach of filing applications for construction permits for new stations has resulted in some ownership and management opportunities. However, in an auction environment where the minimum cost just for a construction permit will be as high as \$2.5 million,³ similar new entrants will continue to face even higher hurdles.


7. KM urges the Commission to move forward quickly in this proceeding, and adopt a Notice of Proposed Rule Making consistent with these comments as soon as possible. KM agrees with Entravision that the Commission's recent adoption of a three year construction period with extremely limited circumstances for extensions likely will result in many construction permits that may expire (absent the proposed new rule). However, KM also notes that it is the permits that may otherwise expire in the next six months, or maybe one year, that likely would be the best candidates for assignment or transfer under the proposed new rule. Therefore, the Commission should expedite action on the Petition.

² See 47 C.F.R. § 1.2110(b)(4) (definition of "affiliate" for determining whether an applicant qualifies as a designated entity).

³ See, e.g., Public Notice, Closed Broadcast Auctions Scheduled for September 28, 1999, DA 99-940, Attachment A at 1 (released May 17, 1999)(minimum bid of \$2.48 million for construction permit for new commercial full power television station on Channel 12 at Logan, Utah).

Wherefore, the above-premises being considered, KM respectfully requests that the Commission grant the Petition and adopt a Notice of Proposed Rule Making proposing new rules to permit minority-owned entities to acquire expiring or expired broadcast construction permits, consistent with the comments made by KM herein.

Respectfully submitted,
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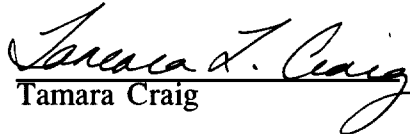
May 24, 1999

CERTIFICATE OF SERVICE

I, Tamara Craig, hereby certify that on or before this 24th day of May, 1999, copies of the foregoing "Comments of KM Communications, Inc." have been served by first-class United States mail, postage prepaid, upon the following:

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